

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 397 of 2005

**Sadhan Chandra Bhakta & Ors.
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Sekhar Basu Mr. Jayanta Kumar Das Ms. Madhumanti Das
For the State	: Mr. Avishek Sinha Mr. R. Das
Heard on	: 29.01.2024, 01.04.2024, 15.05.2024, 19.09.2024
Judgment on	: 06.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 19.05.2005 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Paschim Medinipur in Sessions Trial Case No.23 of July, 2003 arising out of G.R. Case No.798 of 2002, thereby convicting the appellants for the commission of offences under Section 148 of the Indian Penal Code and sentencing them thereunder to suffer rigorous imprisonment for 3 years each and further convicting them for commission of offence under Sections 149/332 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment 3 years each and further sentencing them to suffer for

rigorous imprisonment for 3 years each for offence punishable under Sections 149/324 of the Indian Penal code and sentencing them to suffer rigorous imprisonment for 1 year each for commission of offence punishable under Sections 149/342 of the Indian Penal Code and all sentences will run concurrently.

2. The prosecution case as alleged against the appellants, inter alia, was that in course of investigation of Sabang P.S. Case No.37 of 2002 dated 10.06.2002 under Sections 342/384/323/325/506/34 of the Indian Penal Code, Uma Kanta Singh, Sub-Inspector of Sabong P.S. along with D. Mondal, Assistant Sub-Inspector, C/1838 Pramatha Nath Panda, C/1082 Ratan Santra, C/2485 Bimal Hansda, C/1546 Sadanta Sekhar Shau and NVF Ajit Roy went to village – Srirampur under Sabang P.S., District – Paschim Medinipur on 10.06.2002 at 23:05 hours in Police Jeep No.WMJ 9318 and recovered (i) Srinibash Manna, (ii) Pijush Manna and (iii) Sankar Samanta from the house of Gopal Bera of village – Srirampur, District – Paschim Medinipur. The Police Jeep was kept at village – Amodechak under P.S. Pingla and while returning to said village – Amodechak where the said Jeep was kept at about 23:50 hours, about 150/200 people armed with lethal weapons surrounding them and forcibly snatched away three recovered persons from the custody of the police and also compelled the police force to go with them to village – Srirampur and wrongfully confined them in a room of the said Gopal Bera. The riotous mob threatened the police force and some of them attacked the police with bhojali and the Sub-Inspector Sri Uma Kanta Singh could save him by turning his head and NVF Ajit Roy managed to escape therefrom and intimated the matter to Sabong P.S. over RT. Thereafter, the C.I. of Police,

Debra P.S. along with sufficient police force came to the spot and rescued three persons with police party and arrested 19 accused persons. It was also further case of the prosecution that except that 19 persons, Gopal Bera, Gobinda Bera, Kamalarani Manna and 150 others were also directly involved in the matter.

3. On the basis of the F.I.R., lodged by the S.I. of Police, Sri Uma Kanta Singh, Sabang P.S. Case No. 38 of 2002 dated 11.06.2002 under Sections 148/149/341/342/323/332/186/379/427/307/506 of the Indian Penal Code was registered for investigation.
4. On completions of the investigation, the Investigating Agency submitted charge-sheet against the appellants and they pleaded not guilty and claimed to be tried.
5. In order to prove its case the prosecution examined as many as 11 witnesses while the defence examined none and the plea of the defence was one of innocence and false implication.
6. The Learned Advocate for the appellants submitted that: –
 - i. The matter of hajak was introduced only in the evidence for the first time. PW-4 stated in his evidence that electricity was there inasmuch as there had been no seizure of any such hajak and the assumption of every possibility of presence some kind of light was suspicious.
 - ii. There had been no seizure of any offending weapons except the four outdoor tickets inasmuch as there were gross discrepancies in the evidence of prosecution witnesses regarding the arms used.
 - iii. Section 148 of the Indian Penal Code could only be employed when the rioters were armed with deadly weapons or with weapons of

offence likely to cause death and a person could not be found guilty unless he actually had a dangerous weapon in his hand.

- iv. The depositions of the prosecution witnesses did not establish the essential ingredients of the offences punishable under Sections 149/332, Sections 149/342 of the Indian Penal Code and for the application of Section 149 of the Indian Penal Code in the instant case. Whether being the members of unlawful assemble, the appellants had common intention or common object for commission of offences under Sections 332/ 324 and 342 of the Indian Penal Code was not considered.
- v. There was a failure to analyze the evidence of the prosecution witnesses assessing the role attributed to every appellant by overact amongst 150/200 village people.
- vi. The evidence of PWs 1, 2, 6, 7 and 8 being the interested police witnesses should have been discarded.
- vii. The motive behind the alleged incident was not proved.
- viii. No medical expert was examined by the prosecution to ascertain the nature of injury which was condition precedent so as to convict a person under Section 324 of the Indian Penal Code and such non-examination of the medical expert in the instant case was fatal to the prosecution case.
- ix. Except the police personnel, no other independent witness was examined by the prosecution witnesses i.e., PWs 3, 4 and 5 in their deposition clearly stated that the police were treated well and after discussion all were freed.

7. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.

8. A circumspection of the evidence of the prosecution witnesses revealed as follows:-

- i. PW-1 deposed being attached to Sabang P.S. as S.I. of Police and was 2nd Officer at the P.S., he was investigating Sabang P.S. Case No.37/02 dated 10.06.02 under Sections 342/384/323/325/506/34 of the Indian Penal Code and in the night of 10.06.02 along with force he went to Srirampur village for investigation by police jeep. They stopped the jeep near Amodechak canal as it could be traversed and walked into Srirampur village, in search of 3 persons who were detained in connection with the aforesaid case. On reaching the house of Gopal Bera, they rescued Srinibash Manna, Pijush Manna and Sankar Samanta. The members of house were present except Gopal Bera. The rescued persons were taken to Amodechak canal to their jeep. As they were about to start the jeep, about 150 persons being armed with lathi, bhojali and knife etc., surrounded them and obstructed by placing wooden log in front of their jeep and assaulted and abused them. Thereafter they began assaulting them and abusing them with filthy languages. One of them attacked him with “bhojali” on his head and as he swindled his head the bhojali struck on his right neck, which otherwise could have him killed. The aforesaid 3 persons were forcefully removed from the jeep and also the police force. N.V.F. Ajit Roy could manage to flee from there and

informed others. They tried to solve the matter but in vain. For such act, he did not succeed in the act of investigation of the case and discharge his official duties.

After 1½ hours, C.I. Debra, O.C. Debra, O.C. Pingla, O.C. Sabang with sufficient force arrived and rescued the police force detained and three persons as aforesaid from the house of Gopal Bera.

When they came out of the house, there was hazac light and they identified 19 people who were present there as the persons who were participants in the mischief and they were arrested. He wrote one complaint addressed to the O.C. Sabang P.S. and handed over the same, marked as Exbt.-1.

- ii. PW-1 in his cross-examination stated that he did not know all the 150 persons. He could not identify the accused persons in Court by their names. In the complaint, it was not stated specifically that the case was endorsed to him for investigation. In the complaint, no G.D. No. was mentioned. There was no mention of wood log as placed before the jeep. He showed the wood log to the police officers who rescued them. He could not state if the log was seized and if he signed any such seizure list.
- iii. PW-2, PW-6, PW-8 reiterated to the deposition of PW-1.
- iv. PW-3, PW-4 and PW-5 were declared hostile by the prosecution.
- v. PW-7 deposed that on 10.06.02 at about 10:30 p.m., they went out for a raid to Srirampur village along with PW-1 and other police personnel by a police jeep. The jeep was stopped at the crossing on the moram road and proceeded on foot to Srirampur village. They

rescued three persons from a house. The owner thereof was absent. Those persons were taken for being taken in the jeep. At that time, 150 people with lathi came there and surrounded them. They assaulted them. They compelled them along with those three persons to go to the said house.

PW-1 was attacked by a weapon and it struck on his shoulder. He fled from their clutches and he could not be taken by them. He came to the police jeep and contacted police officers by wireless. Police officers with force came there. They rescued the police force and three other persons. 20 accused people were arrested. Thereafter all were taken to the P.S. Those persons placed a wooden log before their jeep so that it could not move.

- vi. PW-7 in his cross-examination stated that he did not know the accused persons by name. He was not interrogated by the I.O. There was no paper with him to show that he accompanied the raid. Nothing was seized from him.
- vii. PW-9 deposed that on 14.07.02, he was O.C. of Sabang P.S. and S.I. Mollah on transfer handed over the charge of that case and he thereafter took over the charge of that case. On 15.08.02 he raided for arrest Gopal Bera, Gobinda Bera and Kamalarani Manna, but failed to trace them. On 25.08.02 he collected injury report in respect of PW-1 and other police personnel. On 31.08.02, on completion of investigation, he submitted charge-sheet in that case against the total accused 22 nos., showing accused Gopal Bera, Gobinda Bera and Kamalarani Manna as absconders and sought for W/A against them.

- viii. PW-9 in his cross-examination stated that before 14.07.02, he had no knowledge of that case. He did not seize any torn uniform of police personnel, any Hazac light or wooden drum.
- ix. PW-10 deposed that on 11.06.02 he was working as Duty Officer at the said P.S. and received an F.I.R. of PW-1 through PW-7, and thereon he made an endorsement with his signature which marked as Exbt.1/a. The F.I.R. was forwarded to him by the O.C., to the P.S., S.I. Sajahan Molla. He forwarded the same from village Srirampur under his endorsement and signature which was marked as Exbt.-1/b. He drew a formal F.I.R., in his hand-writing and signature marked as Exbt.-3.
- x. PW-10 in his cross-examination stated that after getting information, they usually make a G.D. entry and a specific case was started thereafter.
- xi. PW-11 deposed that on 10.06.02 he was O.C., Sabang P.S., and one Sukumar Manna lodged a written complaint regarding wrongful confinement of his brother by certain persons and on which Sabang P.S. Case No.37/02 dated 10.06.02 was initiated by him and he endorsed the same to PW-1 for investigation. Accordingly, PW-1 left for the spot with force. He made a G.D. entry about such fact being G.D. No.305 dated 10.06.02, marked as Exbt.-4.

On 11.06.02 at 00:30 hours, he received one information from PW-7 over Kharagpur R.T. that PW-7 and his force were confined by the villagers and to rescue them. Accordingly G.D. No.308 dated 11.06.02

was drawn and marked as Exbt.-4/a. He went out with force to the spot.

He reached Srirampur village at 01:35 hours. He noticed wooden log being placed in front of the police jeep no. WMJ/9318. They took out the log from the way and proceeded to the spot. They rescued the police personnel and three public persons, who were injured and their clothes torn. PW-1 wrote a complaint on the spot, on which he made an endorsement and signed it marked as Exbt.-1 and 1/b respectively. He sent the same to the P.S. through PW-7 for starting a specific case and himself took up the investigation. He arrested 19 persons from the spot with the help of force as per identification of the complainant.

He drew a sketch map with index on the spot, marked as Exbt.-5. The house from which the persons were rescued was a thatched one with asbestos shed having two rooms. He searched for other miscreants but failed to apprehend them. He examined the witnesses on the spot. He searched for other witnesses but did not trace them. He forwarded the apprehended persons to the court in due course. On transfer, he handed over the charge of that case to S.I. A. Bose. He also interrogated PW-3, PW-4 and PW-5.

- xii. PW-11 in his cross-examination stated that he could not identify the accused persons by their names. When he came to the spot, Hajak light was burning. He did not seize any Hajak light. He did not seize any wooden log. He could not say the name of the driver of police jeep

and he did not examine him. The driver brought the police jeep to the P.S. later on.

9. Section 148 of the Indian Penal Code states as follows:-

“Rioting, armed with deadly weapon.- *Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

10. Section 149 of the Indian Penal Code states as follows:-

“Every member of unlawful assembly guilty of offence committed in prosecution of common object. - *If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”*

11. Section 324 of the Indian Penal Code states as follows:-

“Voluntarily causing hurt by dangerous weapons or means.— *Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

12. Section 332 of the Indian Penal Code states as follows:-

“Voluntarily causing hurt to deter public servant from his duty.— *Whoever voluntarily causes hurt to any person being a public servant in*

the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

13. Section 342 of the Indian Penal Code states as follows:-

"Punishment for wrongful confinement.—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

14. The document marked as Exhibit-6 series pertained to the injury report issued to the outdoor patient which mentioned the patient i.e. PW-1 to be *"conscious, a small cut, sharp injury on right shoulder near right side of neck ½" x ½". No stitches done. Only AS. Dressing done"*.

15. The nature of the injury as depicted in the aforesaid injury report had been contrary to the exaggerated version of the PW-1 to have sustained such severe injuries as a consequence of the heinous act of inflicting an assault by an offending weapon being a bhojali which could have instantaneously killed him if PW-1 had not ducked or dived on the opposite direction to save himself from the impact of the same.

16. The evidence of PW-1 was a reflection of prevarication out of disgust, anger and infuriation being aghast out of resistance on the part of the indistinct and un-named mob indicted to have been involved in the offence as aforesaid.

17. In **Chandra Pratap Singh Vs. State of Madhya Pradesh**¹, the Hon'ble Apex Court observed as follows:-

“18. In *Chittarmal v. State of Rajasthan* [*Chittarmal v. State of Rajasthan*, (2003) 2 SCC 266 : 2003 SCC (Cri) 514] , this Court dealt with the conversion of charge from Section 302 read with Section 149IPC, to Section 302 read with Section 34IPC. Para 14 of the said decision reads thus: (SCC p. 273)

“14. It is well-settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34IPC, if the evidence discloses commission of an offence in furtherance

¹ (2023) 10 SCC 181

of the common intention of them all. (See *Barendra Kumar Ghosh v. King Emperor* [*Barendra Kumar Ghosh v. King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 : AIR 1925 PC 1 : 26 Cri LJ 431], *Mannam Venkatadari v. State of A.P.* [*Mannam Venkatadari v. State of A.P.*, (1971) 3 SCC 254 : 1971 SCC (Cri) 479], *Nethala Pothuraju v. State of A.P.* [*Nethala Pothuraju v. State of A.P.*, (1992) 1 SCC 49 : 1992 SCC (Cri) 20] and *Ram Tahal v. State of U.P.* [*Ram Tahal v. State of U.P.*, (1972) 1 SCC 136 : 1972 SCC (Cri) 80])”

18. In ***Naresh Alias Nehru Vs. State of Haryana***², the Hon’ble Supreme Court held the following:-

“23. As already noticed hereinabove the prosecution has attempted to drive home the guilt of the accused based on accused persons having shared a common object, by pressing into service Section 149IPC. This provision does not create a separate offence but only declares vicarious liability of all members of unlawful assembly for acts done in common object. Thus, in order to attract Section 149 of the Code it must be shown by the prosecution that the incriminating act was done to accomplish the common object by such unlawful assembly. It must be within the knowledge of the other members as one likely to be committed in furtherance of the common object. Even if no overt act is imputed to the accused, the presence of the accused as part of the unlawful assembly is sufficient for conviction. The inference of a common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them, and the end result.

...

26. To convict a person under Section 149IPC the prosecution has to establish with the help of evidence that firstly, appellants shared a common object and were part of unlawful assembly and secondly, it had to prove that they were aware of the offences likely to be

² (2023) 10 SCC 134

committed to achieve the said common object. Both these ingredients are conspicuously absent and there is no evidence to connect the petitioners with the deceased or the co-accused. Undisputedly, no overt act has been attributed to the appellants, and in unequivocal terms PW 9 admits in his cross-examination that none of the accused except Pawan had caused injury to the deceased and there was only a single shot fired from the pistol.”

19. The evidence of the police personnel should not be disbelieved provided the same did not suffer from inconsistencies, vagueness, untruthfulness, ambiguities, arbitrariness, detestment and distortion.
20. In order to inculcate a person it is an onerous task on the part of the prosecution to adduce evidence not riddled with mendacity and deception.
21. The police witnesses did not name a single appellant apart from a mere assertion of involvement of more than 150 people to restrict them in discharging their public duties. The overt act of the individual appellant vis-à-vis the common intention and the common object in achieving their ulterior motive could not be established.
22. The wooden log, to have been resorted to prevent the onward movement of the jeep, was not recovered, seized and/or produced before the Court. Neither the Hajak light nor the offending weapon were recovered. Indubitably there had been a brawl between both the parties, however, the prosecution failed to establish the initiation of the dispute at its inception either through instigation, provocation, deliberation and/or premeditation and prior determination. The evidence of record obliterated the possibility of wrongful confinement in the event of description of the house being thatched with asbestos roof.

23. The elements to constitute an offence under Sections 148/149/332/324/342 of the Indian Penal Code are absent.
24. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal being CRA 397 of 2011 is allowed.
25. Under such facts and circumstances, the judgment and order dated 19.05.2005 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Paschim Medinipur in Sessions Trial Case No.23 of July, 2003 arising out of G.R. Case No.798 of 2002 is set aside.
26. Accordingly, the instant criminal appeal being CRA 397 of 2005 stands disposed of.
27. There is no order as to costs.
28. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
29. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)